

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston Division**

NATURAL ALTERNATIVES
INTERNATIONAL, INC.,

Plaintiff,

v.

WOODBOLT DISTRIBUTION, LLC,
also known as Cellucor, *et al.*,

Defendants.

Civil Action No. 11-4511

JURY TRIAL DEMANDED

SUPPLEMENTAL COMPLAINT

Plaintiff, Natural Alternatives International, Inc. (“NAI”), for its supplemental complaint against defendant, Woodbolt Distribution, LLC, also known as Cellucor (“Woodbolt”), alleges as follows:

1. On December 21, 2011, NAI filed its complaint in this action alleging that Woodbolt and co-defendants F.H.G. Corporation, d/b/a Integrity Nutraceuticals (“FHG”) and Vitaquest International, Inc., d/b/a Garden State Nutritionals (“Vitaquest”) infringed one or more claims of NAI’s U.S. Patent No. 8,067,381 (“the ‘381 patent”) in connection with certain Woodbolt dietary supplement products containing beta-alanine, including without limitation, C4 Extreme, M5 Extreme, and N-Zero Extreme. That complaint is incorporated herein by reference.

2. On May 3, 2012, NAI filed a complaint in this Court in Civil Action No. 12-1388 alleging that Woodbolt infringed one or more claims of NAI’s U.S. Patent No. 8,129,422 (“the ‘422 patent”) in connection with certain Woodbolt dietary supplement products containing beta-alanine, including without limitation, C4 Extreme, M5 Extreme, and N-Zero Extreme. That

complaint is incorporated herein by reference. That case was subsequently consolidated into this case.

3. This supplemental complaint is intended to supplement NAI's previous complaints pursuant to Fed. R. Civ. P. 15(d) to set forth subsequent developments and to allege that a new Woodbolt product infringes one or more claims of the patents-in-suit.

FACTS

BCAA

4. In Summer 2012, Woodbolt began making, having made, using, offering for sale and selling a new product that contains beta-alanine, Cellucor COR-Performance β -BCAA™ ("BCAA"). Woodbolt began offering free samples of its new product on or about July 23, 2012. (Ex. 1). It began actively selling BCAA to the public on or about September 13, 2012 (Ex. 2). In fact, Woodbolt blatantly introduced BCAA while NAI's cross-motion for summary judgment of infringement of the patents-in-suit relating to its C4, M5 and N0 accused products is pending before this Court.

5. Woodbolt's product labels, marketing materials and website represent that this new product contains beta-alanine. (*See, e.g.*, Exs. 3-5). For example, Woodbolt's label for 345 grams of BCAA, containing 30 servings, represents that a one scoop serving contains 1.6 grams of beta-alanine and a two scoop serving contains 3.2 grams of beta-alanine. (Ex. 3).

6. In marketing BCAA, Woodbolt represents to the public that:

Cellucor COR-Performance β -BCAA™ features clinically studied doses of BCAAs, Beta Alanine, Citrulline and HICA, which are proven to help athletes build muscle, sustain maximum output, and recover from intense training and sports activities.

Beta Alanine is known for the 'tingling' sensation most users feel after consumption. Cellucor COR-Performance β -BCAA™ uses a clinically studied 3.2g dose of Beta Alanine to deliver maximum

results and a great activation feeling that let's you know the product is 'kicking in.'

The vast majority of Beta Alanine users report a slight tingling sensation after ingestion. If you don't feel the 'tingles', don't worry, the product is still hard at work to maximize your workout.

Most BCAA users are looking for that extra something, an edge to help them train harder, longer. Beta Alanine is an amino acid that has been shown to support muscular endurance and improve performance. Beta Alanine is an effective fatigue arrester that prevents lactic acid from accumulating too quickly in skeletal muscle (which occurs during training) allowing you to bring your best, every workout, every game, every time.

Cellucor COR-Performance β -BCAATM also features a clinically studied dose of HICA, a metabolite of the Branched Chain Amino Acid Leucine, to support lean mass and strength gains. The clinically studied dose of HICA in Cellucor COR-Performance β -BCAA, when taken by weight training athletes, netted increases in muscle and decreased symptoms of training-induced muscle soreness, once again helping you to train harder and longer.

The Cellucor COR-PerformanceTM Series features premium, innovative formulas you expect from Cellucor in an all-new line up of commodity sports nutrition products. Featuring fully disclosed, clinically dosed formulas and unmatched flavor systems, the COR-Performance series is designed to satisfy every customer: great formulas, great flavors and great prices. The entire line is GMP, Informed-Choice and TruFactsTM certified.

(Ex. 4).

7. Woodbolt further represents to the public that:

Beta Alanine is a naturally occurring amino acid. Beta Alanine produces higher intramuscular carnosine levels which amplifies energy levels, supports muscular endurance, and improves performance. Beta Alanine is an effective fatigue arrester — it acts as a buffer, preventing lactic acid accumulation in skeletal muscle (which occurs during exercise) allowing the body to perform better, longer.

(*Id.*; Ex. 5).

8. Woodbolt provides instructions related to the use of sports nutrition supplements, including instructions related to the use and consumption of BCAA. The product label expressly directs users to: “Mix one to two scoops of Cellucor COR-Performance β -BCAA™ in at least 8 oz. of cold water or other beverage of choice **daily**.” (Ex. 3) (emphasis added). Thus, Woodbolt is directing users to ingest 1.6 to 3.2 grams of beta-alanine every day for a continuous period of time.

9. Woodbolt’s product label for BCAA goes on to represent that: “For maximum results, stack COR-Performance β -BCAA™ with Cellucor C4 Extreme™” (Ex. 3). A September 20, 2012 entry by Woodbolt on its Facebook page instructed that: “#CORPERFORMANCE β -BCAA will definitely enhance your workout.... Want even more?!?! Try stacking your β -BCAA with M5/C4 Extreme for an explosive Pre/Intra- workout stack.” (Ex. 13). As alleged in the complaint in this action, C4 also contains beta-alanine. Woodbolt sells different sizes of C4 that contain beta-alanine. For example, Woodbolt sells a 5.2 gram per serving size jar of C4, which contains 1.5 grams per serving size of beta-alanine. (Dkt. Nos. 10-11). By “stacking” or combining BCAA with C4, Woodbolt is directing its customers to take between 3.1 and 4.7 grams of beta-alanine daily for a continuous period of time.

10. Woodbolt’s BCAA product is advertised and marketed to the public and such product may be purchased in retail stores (including in this District), on Woodbolt’s website or by telephone, and from third-party websites such as Bodybuilding.com and GNC.com. (*See, e.g.*, Exs. 6-7).

11. Woodbolt makes, imports, uses, offers for sale and sells products that fall within the scope of one or more claims of the ‘381 patent. In addition, Woodbolt induces others to

infringe one or more claims of the '381 patent, including the directly infringing GNC and Bodybuilding.com that offer for sale and sell BCAA.

12. Woodbolt induces others to infringe one or more claims of the '422 patent, including the directly infringing consumers who purchase and use BCAA.

13. The identity of direct infringers of the '422 patent, *i.e.*, specific Woodbolt customers that have purchased and used the BCAA product, will be ascertained through discovery of Woodbolt and third parties. Further, Cellucor's own social media postings have identified persons who use BCAA and directly infringe one or more claims of the '422 patent. (*See, e.g.*, Exs.1, 13).

14. Woodbolt knowingly induced the directly infringing acts by its customers and it had the specific intent to encourage another's infringement of the '422 patent through the use of BCAA.

15. Woodbolt's BCAA product was specially designed and made for use in a way that would infringe one or more claims of the '422 patent and there is no substantial non-infringing use for such product.

16. Woodbolt had actual knowledge of the existence of NAI's patents-in-suit before it introduced BCAA to the market.

CREATINE

17. In Summer 2012, Woodbolt began making, having made, using, offering for sale and selling a new product, Cellucor COR-Performance™ Creatine ("Creatine"). Woodbolt began actively selling Creatine to the public on or about September 13, 2012 (Ex. 2). Again, Woodbolt introduced Creatine while NAI's cross-motion for summary judgment of infringement of the patents-in-suit is pending.

18. Woodbolt's product labels, marketing materials and website represent that the new Creatine product "stacks well" with other accused products containing beta-alanine, including C4 Extreme, N0 Extreme, M5 Extreme and BCAA. (*See, e.g.*, Exs. 8-10). By "stacking" or suggesting that customers combine ingesting Creatine with one or more of its other accused products, Woodbolt is directing its customers to take between 1.6 and 3.2 grams of beta-alanine daily for a continuous period of time.

19. Woodbolt's Creatine product is advertised and marketed to the public and such product may be purchased in retail stores (including in this District), on Woodbolt's website or by telephone, and from third-party websites such as Bodybuilding.com and GNC.com. (*See, e.g.*, Exs. 11-12).

20. Woodbolt induces others to infringe one or more claims of the '422 patent, including the directly infringing consumers who purchase and use Creatine and to stack it with another accused product.

21. The identity of direct infringers of the '422 patent, *i.e.*, specific Woodbolt customers that have purchased and used the Creatine product, will be ascertained through discovery of Woodbolt and third parties.

22. Woodbolt knowingly induced the directly infringing acts by its customers and it had the specific intent to encourage another's infringement of the '422 patent through the use of Creatine and another accused product.

23. Woodbolt had actual knowledge of the existence of NAI's patents-in-suit before it introduced Creatine to the market.

24. Woodbolt is not licensed or authorized to use NAI's patents-in-suit for any of the products they sell or methods they teach.

25. The documents and exhibits referred to herein are incorporated by reference.

SUPPLEMENTAL COUNT I
(‘381 Patent Infringement – Woodbolt)

26. The foregoing allegations of this complaint are incorporated by reference.

27. Woodbolt has made, used, sold, offered for sale and/or imported its BCAA product embodying the patented invention, thereby infringing, literally or under the doctrine of equivalents, one or more claims of the ‘381 patent, and will continue to do so unless enjoined therefrom.

28. Woodbolt has contributed to the use, sale and/or offer for sale by others of its infringing products, methods and services.

29. Woodbolt has induced the use, sale and/or offer for sale by others of its infringing products, methods and services.

30. Woodbolt’s infringement has been willful.

31. NAI has suffered damages in an amount to be determined at trial.

32. NAI has been irreparably harmed by Woodbolt’s acts of infringement of the ‘381 patent and a preliminary and permanent injunction should be entered against Woodbolt and all others acting in concert with it.

SUPPLEMENTAL COUNT II
(‘422 Patent Infringement – Woodbolt)

33. The foregoing allegations of this complaint are incorporated by reference.

34. Woodbolt was aware of the ‘422 patent and actively induced infringement by third parties of one or more claims of the ‘422 patent with the specific intent to encourage another’s infringement, and will continue to do so unless enjoined therefrom.

35. Woodbolt has contributed to the use, sale and/or offer for sale by others of infringing products and methods, knowing that its BCAA and Creatine products have been especially made or adapted for use in an infringement of the '422 patent. The BCAA and Creatine products are not suitable for a non-infringing use.

36. Woodbolt's infringement has been willful.

37. NAI has suffered damages in an amount to be determined at trial.

38. NAI has been irreparably harmed by Woodbolt's acts of infringement of the '422 patent and a preliminary and permanent injunction should be entered against Woodbolt and all others acting in concert with it.

REQUEST FOR RELIEF

NAI respectfully requests that this Court enter judgment against Woodbolt and that the following relief be granted:

- a. judgment that Woodbolt has infringed one or more claims of the '381 and '422 patents (35 U.S.C. § 271(b)-(c));
- b. judgment that Woodbolt's infringement of claims of the patents-in-suit was willful;
- c. preliminary and permanent injunction against continued infringement by Woodbolt and all others acting in concert with it (35 U.S.C. § 283);
- d. damages for past infringement (35 U.S.C. § 284);
- e. increased and trebled damages for willful infringement (35 U.S.C. § 284);
- f. imposition of a constructive trust on all proceeds from the sale of infringing products;
- g. attorneys' fees as allowed by law, including without limitation, 35 U.S.C. § 285;
- h. costs pursuant to Fed. R. Civ. P. 54(d) or otherwise provided by law; and

- i. such other relief as the Court deems just and appropriate under the circumstances.

JURY DEMAND

NAI hereby demands a jury trial on all issues so triable.

Dated: October 15, 2012

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Respectfully submitted,

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